

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE REQUEST FOR)
PROPOSALS AND THE REVIEW AND)
APPROVAL OF ANY PROPOSED)
CONTRACT(S) FOR THE PURCHASE OF) PSC DOCKET NO. 16-1031
WIND-GENERATED RENEWABLE ENERGY)
CREDITS BY DELMARVA POWER & LIGHT)
COMPANY (FILED NOVEMBER 1, 2016,)
REVISED JUNE 14, 2018))

ORDER NO. 9244

AND NOW, this 10th day of July 2018:

WHEREAS, Exelon Corporation ("Exelon") and Pepco Holdings, Inc. ("PHI") executed an Agreement and Plan of Merger on April 29, 2014, and an Amended and Restated Agreement and Plan of Merger on July 18, 2014; and

WHEREAS, on June 18, 2014, Exelon, PHI, Delmarva Power & Light Company ("Delmarva"), and other related entities (collectively, the "Joint Applicants") filed an application (the "Merger Application") seeking Commission approval of the proposed Merger of Exelon and PHI (the "Merger") and the resulting change in control of Delmarva, pursuant to 26 Del. C. §§ 215 and 1016. The Commission opened Docket No. 14-193 to review the Merger Application; and

WHEREAS, Commission Staff ("Staff"), the Division of the Public Advocate ("Public Advocate"), and multiple intervenors

engaged in substantial discovery and filed testimony in Docket No. 14-193; and

WHEREAS, Staff, the Public Advocate, the Joint Applicants, and intervenors engaged in lengthy and detailed settlement discussions which culminated in a proposed settlement (the "Amended Merger Settlement Agreement"); and

WHEREAS, after evidentiary hearings, the Commission approved the Amended Merger Settlement Agreement and the Merger;¹ and

WHEREAS, Paragraph 84 of the Amended Merger Settlement Agreement contains an obligation for Delmarva to issue competitive requests for proposals ("RFPs") to purchase wind Renewable Energy Credits ("RECs") on commercially reasonable terms in three tranches. The primary factor to be considered in the RFP bid process will be price. The first tranche will be for RECs from one or more wind renewable generating facilities with an aggregate capacity of up to 40 MW (nameplate) beginning in compliance years 2017-2018, and the second tranche will be will be for RECs from one or more wind renewable generating facilities with an aggregate capacity of up to 40 MW (nameplate) beginning in compliance years

¹ See Order No. 8746 (June 2, 2015).

2019-2020;² and

WHEREAS, on December 1, 2016, in Order No. 8990, this Commission approved the issuance of Tranche 1 and the revised RFP; and

WHEREAS, the Tranche 1 RFP was issued on February 17, 2017, and the lowest bidder was selected; however, near the conclusion of negotiations of the final contract, the bidder informed Delmarva that it could not obtain the necessary contract security and a contract was never executed; and

² Paragraph 84 of the Merger Settlement Agreement provides as follows:

"For the purpose of meeting the renewable portfolio standards under current law, Delmarva Power will issue a competitive request for proposals ("RFP(s)") to purchase wind Renewable Energy Credits ("RECs") on commercially reasonable terms in three tranches: (1) the first for RECs from one or more renewable generating facilities with an aggregate capacity of up to 40 MW (nameplate) beginning in the compliance years 2017-2018 for a term of 10 to 15 years; (2) the second for RECs from one or more renewable generating facilities with an aggregate capacity of up to 40 MW (nameplate) beginning in the compliance years 2019-2020 for a term of 10 to 15 years; and (3) the third for RECs from one or more renewable generating facilities with an aggregate capacity of up to 40 MW (nameplate) beginning in the compliance years 2023-2024 for a term of 10 to 15 years. The Settling Parties agree that if circumstances or conditions change (including but not limited to a material change in the projected load of Delmarva Power such that fewer RECs are required, or a substantial change in the cost of RECs through the spot market such that additional spot-market purchases in lieu of long-term contract purchases would be prudent), they will work in good faith with each other and present any proposed modification to the Commission as may be warranted by those changed conditions. The primary factor under the RFP bid process will be price, and all costs associated with the REC agreement(s) will flow through the Renewable Portfolio Compliance Rate surcharge currently in place to assure complete and timely cost recovery by Delmarva Power. Delmarva Power, with the concurrence of the Renewable Energy Task Force, shall file any such RFP pursuant to this paragraph with the Commission for its review and required approval prior to issuance. Any proposed contract(s) resulting from the RFP shall also be submitted to the Commission for final review and approval before execution."

WHEREAS, to address the fact that the Tranche 1 RFP did not result in a 40 MW REC contract, Delmarva created a Tranche 2 RFP with the following changes from the previously approved Tranche 1 RFP: (1) the Tranche 2 RFP now includes an option for bidders to propose an additional 40 MW (i.e., up to 80 MW) in their bids; (2) the RFP was updated for current dates; (3) proposal requirements were amended to allow bidders to submit more than one proposal for a generating facility, provided that each proposal pertains to a different portion of that facility; and (4) the contract security provisions were modified to provide more options for the required contract security; and

WHEREAS, on June 14, 2018, Delmarva filed a Request to Approve Tranche 2 Request for Proposals for the Purchase of Wind-Generated Renewable Energy Credits ("Request") which included a revised redline of the Commission's previously approved RFP titled "Request for Proposals for Wind Renewable Energy Credits" dated April 30, 2018; and

WHEREAS, prior to the Request being filed, Staff expressed its concern to Delmarva that the issuance of Tranche 2 RFP was premature because (i) Order No. 8990 did not approve Tranche 2 or an increased total of up to 80 MW and (ii) the Renewable Energy Taskforce (the "RETF") did not approve Tranche 2; and

WHEREAS, the Request states that Delmarva mistakenly believed that the Commission's December 1, 2016 approval of Tranche 1 RFP

covered all three RFP Tranches and thus Delmarva issued the RFP on April 30, 2018; and

WHEREAS, the Request for Tranche 2 seeks approval for the RFP for RECs from one or more renewable wind generating facilities with an aggregate capacity of up to 80 MW, with each bid limited to 40 MW (nameplate) beginning in the compliance year 2019-2020 for a term of 10-15 years; and

WHEREAS, there are two components of the process of complying with the wind RFP commitment contained in Paragraph 84 of the Amended Merger Settlement Agreement which require Commission approval: (a) initial approval to issue the RFP;³ and (b) Commission review and potential approval of any proposed contracts resulting from the RFP prior to execution;⁴ and

WHEREAS, the Amended Merger Settlement Agreement also requires Delmarva to obtain the concurrence of the RETF with

³ Paragraph 84 of the Merger Settlement Agreement provides: "Delmarva Power . . . shall file any such RFP pursuant to this paragraph with the Commission for its **review and required approval** prior to issuance." (Emphasis added). See *supra* n. 1.

⁴ Paragraph 84 of the Merger Settlement Agreement provides: "[a]ny proposed contract(s) resulting from the RFP shall also be submitted to the Commission for **final review and approval** before execution." (Emphasis added). See *supra* n. 1.

respect to the proposed form of the RFP.⁵ The RETF has provided the necessary concurrence⁶ for the second tranche; and

WHEREAS, Delmarva, Staff, and MAREC⁷ agree that the final draft form of RFP provided to the Commission for its review is consistent with the requirements of Paragraph 84 of the Amended Merger Settlement Agreement and as such, should be approved for issuance by Delmarva; and

WHEREAS, the Commission, having carefully reviewed the final draft form of RFP and the parties' positions, hereby orders as follows;

NOW, THEREFORE, IT IS ORDERED BY THE AFFIRMATIVE VOTE OF NOT FEWER THAN THREE COMMISSIONERS:

1. The Request to Approve Tranche 2 Request for Proposals is **APPROVED**.

2. The revised Request for Proposals for Wind Renewable Energy Credits issued by Delmarva dated April 30, 2018⁸ is approved.

⁵ Paragraph 84 of the Merger Settlement Agreement provides: "...Delmarva Power, with the concurrence of the Renewable Energy Task Force, shall file any such RFP pursuant to this paragraph with the Commission..."

⁶ See Email from Thomas Noyes to Todd Goodman, dated June 12, 2018 ("Attachment A" to Delmarva's Request).

⁷ MAREC is "Mid-Atlantic Renewable Energy Coalition." MAREC was an intervenor in the Merger Docket and a party to the Merger Settlement Agreement.

⁸ Labeled Attachment B of the Request of Delmarva Power & Light Company to Approve the Tranche 2 Request for Proposals for the Purchase of Wind-Generated Renewable Energy Credits filed June 14, 2018.

3. Consistent with the provisions of Paragraph 84 of the Amended Merger Settlement Agreement, Delmarva will seek approval of any proposed REC purchase contract(s) resulting from the RFP through a subsequent filing under this docket.

4. That such subsequent filing(s) in this docket will include, among other things, an application and prefiled testimony supporting the requested approval of any proposed REC purchase contract(s).

5. That the procedural schedule will allow for a properly noticed public comment period, intervention deadline, and an evidentiary hearing.⁹

6. That the Commission reserves the jurisdiction and authority to enter such further orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Chair

Commissioner

⁹ See 26 Del. C. § 1007(b) and 29 Del. C. § 10124.

Commissioner

Commissioner

Commissioner

ATTEST:

Secretary